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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 05-60067

VERSUS

JUDGE DOHERTY

JAMIE EDELKIND

MAGISTRATE JUDGE METHVIN

ORDER

Considering the Motion to Dismiss [Doc. 40] filed on behalf of Mr. Edelkind, the briefing submitted thereon, and the Report and Recommendation issued by Magistrate Judge Methvin, and for the reasons more fully set forth on the record on this date,

IT IS HEREBY ORDERED that the Motion to Dismiss shall be and is DENIED IN PART AND GRANTED IN PART, as follows:

- as to the request for dismissal on the basis that the Child Support Recovery Act violates the Commerce Clause, the motion is DENIED;
- as to the request for dismissal on the basis that Paragraph (b) of 18 U.S.C. § 228 impermissibly relieves the United States of the obligation of proving an essential element of the crime alleged, the motion is GRANTED on the ground that the provision is unconstitutional, but the provision is SEVERED and, therefore, the enforceability of the remainder of the statute is not impacted by this ruling; and
- as to the request for dismissal on the basis that the Indictment includes actions which are outside of the statute of limitations, the motion is DENIED.

IT IS HEREBY FURTHER ORDERED, in light of this Court's finding that Paragraph (b)

is unconstitutional, that the jury shall not be instructed as to any presumption regarding Mr. Edelkind's ability to pay the child support obligation that is the subject of the indictment.

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana, this 17 day of May, 2006.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE